



June 25, 1999

Mr. Marcus W. Norris
City Attorney
City of Killeen
P.O. Box 1329
Killeen, Texas 76540-1329

OR99-1769

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125630.

The City of Killeen (the "city") received a request from a Department of Public Safety ("DPS") officer for a city "EMS report" regarding a named individual and from a city police officer for another "EMS report" identified by number. You ask whether the requested records ("EMS records") are confidential under section 552.101 of the Government Code.

Section 552.101 protects, *inter alia*, information made confidential by statute. Chapter 773, subchapter D, of the Health and Safety Code governs the release of emergency medical service ("EMS") records. Section 773.091(b) of the chapter provides:

(b) records of the identity, evaluation, or treatment of a patient by emergency medical services personnel or by a physician providing medical supervision that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider are confidential and privileged and may not be disclosed except as provided by this subchapter.

Exceptions to the confidentiality of such records are set out in section 773.092. Subsections (a) through (d) pertain to release in connection with court or administrative proceedings and do not appear to be relevant here. Subsection (e) provides for release to law enforcement and medical personnel where there is a probability of imminent physical danger to any person or of immediate mental or emotional injury to the patient; to governmental agencies if disclosure is required or authorized by law; for purposes of audits, research, evaluations, etc.; to persons who bear written consent to release by the patient or other authorized person; to the Department of Health for data collection or complaint investigation; to medical personnel participating in the diagnosis, evaluation or treatment of the patient; and to persons or entities involved in fee payment or collection for the emergency medical services rendered.

In our opinion, none of the exceptions to the confidentiality provision of section 773.091(b) permit general release of EMS records to either requestor here. Please note, however, that subsection (g) of section 773.091 specifically provides that information as to “the presence, nature of injury or illness, age, sex occupation, and city of residence of a patient receiving emergency medical services” is not protected by the confidentiality provisions of the section.¹ Therefore, you must withhold the requested records except for the information listed in subsection (g), which must be released.

We understand you to argue that release to the city’s own police officer would not run afoul of the confidentiality provision because the city is “a single legal entity” holding the records, and providing the records to an employee of the city, “as needed for official purposes,” would not be a “disclosure” for purposes of the restriction on disclosure in section 773.091(b).² We disagree, at least so far as release to the city police officer/requestor is concerned. Again, the confidentiality provision in section 773.091(b) states that “*records . . . that are created by the emergency medical services personnel or physician or maintained by an emergency medical services provider . . . may not be disclosed except as provided by this subchapter.*” (Emphases ours) In our opinion, this provision, coupled with the specifically limited provisions for release set out in section 773.092, prevents the emergency service personnel or physicians who create or maintain the records in question from releasing them to any others except as specifically provided for in subchapter D of chapter 773. While there may be practical questions as to which personnel may be considered to “obtain” or “maintain” the emergency medical service records in question such that they themselves would have access to them, as well as questions as to which individuals are permitted access under the exceptions to disclosure set out in section 773.092, we think it clear that the city police officer/requestor here is not one of such individuals.³

¹We note that you cite, as applicable to the records here, the confidentiality provision and exceptions set out in V.T.C.S. article 4495b, the Medical Practices Act (the “MPA”). See *V.T.C.art.4495b*, §5.08. Since the provisions of chapter 773, subchapter D, of the Health and Safety Code specifically apply to EMS records, we do not address the MPA provisions here except to note that, even assuming that the MPA provisions also apply to EMS records, we do not find any exceptions to the confidentiality provisions in the latter statute which would permit release to the requestors here. See Health & Safety Code § 773.091(d) (“This subchapter governs . . . records concerning a patient regardless of when the patient received the services of emergency medical services personnel or a physician providing medical supervision.”). But see Open Records Decision No. 598 (1991).

²You argue, by way of example, that city personnel responsible for collecting fees for emergency medical services must in any case be given access to such records. We would note, however, that such release for collections purposes is specifically authorized by subsection (e)(7) of section 773.09, referenced above.

³Compare Open Records Decision No. 468 (1987) (city’s showing employee his evaluation is not “voluntarily making . . . record available to the public” such that record must thereafter be released to any person, under predecessor provisions to section 552.007 of Government Code).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/eaf

Ref.: ID# 125630

encl. Submitted documents

cc: Mr. Jimmy Johnson
304 Priest
Killeen, Texas 76541
(w/o enclosures)

cc: Mr. F.L. Giacomozzi
City of Killeen - Police Department
402 North 2nd Street
Killeen, Texas 76541
(w/o enclosures)